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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,281	09/21/1999	TORU TATEISHI	04284.0815	3269

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EXAMINER	
BLOUNT, STEVEN	

ART UNIT	PAPER NUMBER
2661	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/400,281	TATEISHI, TORU	
	Examiner	Art Unit	
	Steven Blount	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 6 and 11 - 37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 - 6 and 11 - 37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 – 6, 11 – 31, 34 – 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent number 5,212,684 to MacNamee et al.

With regard to claim 1, MacNamee et al teaches a system wherein a communication apparatus 14 in figure 5 communicates with relay station BSC 1, which in turn is stated to BSC 2, as is detailed in col 5 lines 40 – 60 and col 4 lines 15 – 25 and col 2, lines 5 – 20. More specifically, the communication apparatus is comprised of notifying unit 38/40 in figure 5, and col 5 lines 55+, the abstract, col 6 lines 10+, teach that the relay stations (primary and secondary) communicate information which would include the data rate which is arrived at based on a negotiation between the apparatus unit and the first base station controller BSC 1, as is detailed in col 5, lines 40 – 60 (negotiation described in col 5, lines 40+, based on the codec/multiplexer (selector unit) interaction with the primary station as described therein). Note that selecting the data rate based on the number of channels is taught in col 2, lines 9 – 15. While MacNamee does not explicitly teach that this process occurs in the communicating apparatus at the opposite end such that the process is a mirror image, wherein selecting the data rate is based on *both* the values negotiated between the communication apparati and their

associated first and second base station controllers, it would be obvious to have the other transmitter duplicate this process and send the information to a detecting unit in the first communication apparatus in view of the symmetrical nature of the operation and the fact that the communication is occurring in a duplex environment, such that a balanced communication process can occur between users situated at the ends of the base stations BS1, BS2, BS3, or BS4.

With regard to claim 2, while it is not explicitly mentioned that the negotiated value provided by 38/40 is a notified number, it would obvious to make it so.

With regard to claim 3, using the detected value would be obvious in view of the rejection of claim 1 described above.

With regard to claim 4 - 5, see the "I" field in col 7, lines 40+.

With regard to claim 6 and 11 – 22, the method steps are all taught with respect to the apparatus limitations above.

With regard to claims 23 - 27, see the rejection of claims 1 - 5 above and note that each of the notifying, detecting, and selecting units are discussed with respect to claim 1 above.

With regard to claim 28, see the rejection of claim 1 above.

With regard to claim 29, it would be obvious to carry out the above process with only a single BSC as opposed to two as described above.

With regard to claims 30 – 31 and 34 – 35, each of the obtaining/obtaining/determining units corresponds to the members discussed in claim 1 above.

With regard to claim 37, each of the determining/determining/determining units is discussed in claim 1 above.

3. Claims 32, 33, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent number 5,212,684 to MacNamee et al as applied above, and further in view of applicants admitted prior art (AAPA).

With regard to each of these claims, MacNamee et al teaches the invention as described above, but does not teach determining a first number of usable channels between the first communication apparatus and a first base station being connected to the first communication apparatus *based on a number of idle channels of the first base station.* AAPA teaches the use of idle channels in this manner. See page 3 line 13 of AAPA.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have determined the number of usable channels between the first communication apparatus and the first base station being connected to the first communication apparatus in MacNamee et al based on a number of idle channels of the first base station, in light of the teachings of AAPA, in order to provide an optimum use of the channel resources in MacNamee et al and to provide the best traffic throughput.

Response to Arguments

4. The examiner maintains that 38 and 40 of figure 5 depict the notifying unit. Also, the examiner maintains it would be obvious to duplicate the process and send the information to a detecting unit in the first communication apparatus, for the reasons given in the Office action.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Ajit Patel
Primary Examiner

SB
2/5/05